

MARCH 8, 2018 | INDUSTRY-SPECIFIC COMPLIANCE

Cal/OSHA Compels Hospitality Employers to Clean Up Their Act, Ergonomically Speaking

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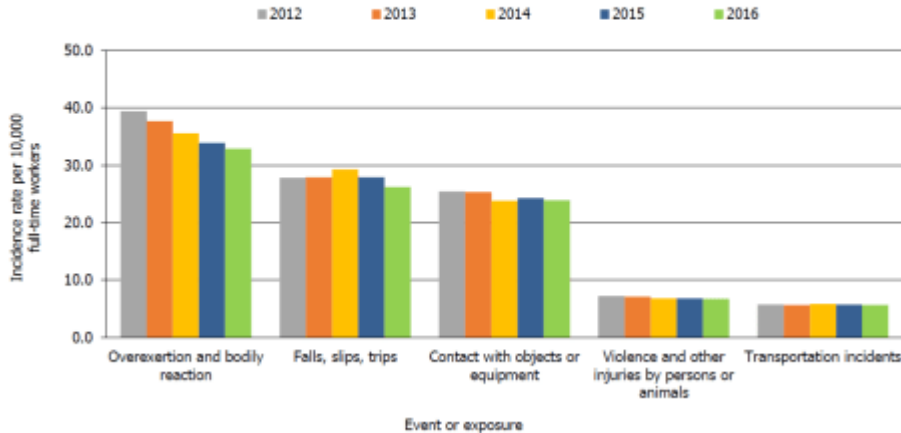
Musculoskeletal disorders (MSDs) are the single most common type of work-related injury, but federal OSHA has struggled for decades to develop a coherent regulatory and/or enforcement strategy to address the hazards that cause these ergonomic injuries. Where federal OSHA fell short, the State of California has picked up the slack, with Cal-OSHA recently finalizing a safety standard regarding Housekeeping Musculoskeletal Injury Prevention. The standard, which will go into effect this summer applies to all lodging establishments that offer sleeping accommodations available to be rented by members of the public, and requires operators to develop, implement and maintain a written Musculoskeletal Injury Prevention Program tailored to hazards associated with housekeeping.

Background About Ergonomics

An ergonomic hazard is a physical factor within the work environment that has the potential to cause a musculoskeletal disorder (MSD). MSDs are injuries and disorders that affect the human body's movement or musculoskeletal system; i.e., muscles, tendons, ligaments, nerves, discs, blood vessels, etc. Common ergonomic hazards include repetitive movement, manual handling, workplace design, uncomfortable workstation height, and awkward body positioning. The most frequent ergonomic injuries (or musculoskeletal disorders) include muscle/tendon strains, sprains, and back pains, Carpal Tunnel Syndrome, Tendonitis, Degenerative Disc Disease, Ruptured / Herniated Disc, etc., caused by performing the same motion over and over again (such as vacuuming), overexertion of physical force (lifting heavy objects), or working while in an awkward position (twisting your body to reach up or down to perform a work task).

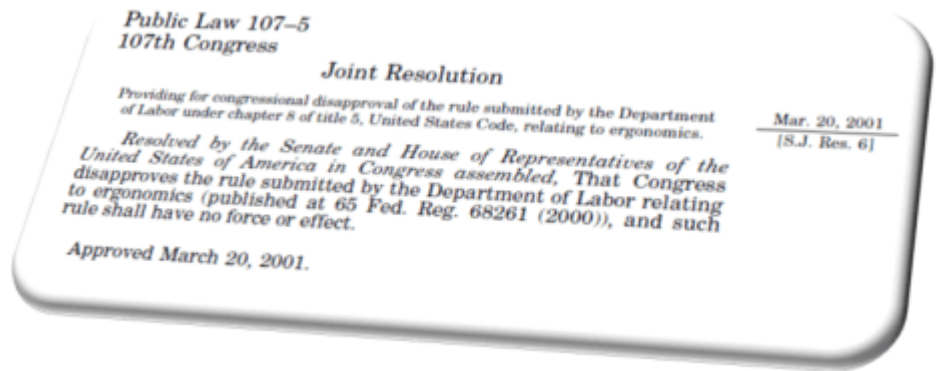
MSDs are the single most common type of work related injury. According to [Bureau of Labor Statistics data](#), MSDs alone account for nearly 30% of all worker's compensation costs. [OSHA estimates](#) that work-related MSDs in the U.S. alone account for over 600,000 injuries and illnesses (approx. 34% of all lost workdays reported to the BLS), and employers spend as much as \$20 billion a year on direct costs for MSD-related injuries and up 5x that on indirect costs (e.g., lost productivity, hiring and training replacement workers, etc.).

Nonfatal occupational injury and illness incidence rates for cases with days away from work by selected event or exposure, all ownerships, 2012-16



Federal OSHA’s Ergonomics Enforcement Policy

Nevertheless, federal OSHA has been lost in the woods for years searching for a coherent ergonomics enforcement policy. In the final days of the Clinton Administration in November 2000, federal OSHA promulgated an extremely controversial midnight Ergonomics Standard, requiring employers to take measures to curb ergonomic injuries in the workplace. Days later, utilizing the Congressional Review Act (CRA), the Republican Congress voted to overturn the ergonomics regulation and newly elected President George W. Bush signed the resolution of disapproval, repealing the ergonomics standard. Because the CRA prevents the agency from promulgating a substantially similar regulation, ergonomic injuries have since gone unregulated, other than sparing use of the general duty clause.



Although employers in states subject to federal OSHA jurisdiction have thus been able to adopt a wait-and-see approach with respect to ergonomics enforcement generally, and specifically how the Trump Administration will roll-out its overall deregulation agenda to workplace safety matters, some states with their own OSH Programs are stepping in to fill the void.

Cal/OSHA on Ergonomics

To no one’s surprise, California is one state pushing progressive new worker safety regulatory requirements, even as federal OSHA retreats in that area. One significant new move by Cal-OSHA is the recently

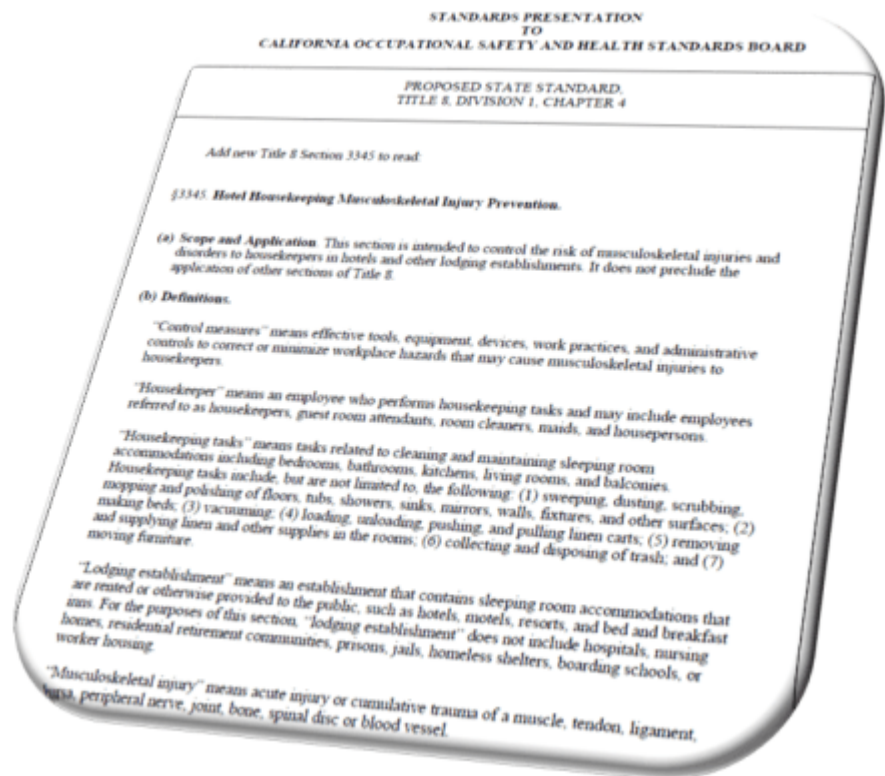
finalized [safety standard on Hotel Housekeeping Musculoskeletal Injury Prevention](#). The new standard, which will be enforced by Cal/OSHA, was approved on March 9th by the Office of Administrative Law, and will become effective July 1, 2018.

[This standard](#), which focuses on ergonomic hazards associated with housekeeping positions, follows closely on the heels of a series of “panic button” ordinances enacted by several large cities across the country to protect housekeepers from sexual assault by hotel guests and/or visitors.

California adopted the new workplace safety and health regulation to prevent and reduce work-related injuries to housekeepers in the hotel and hospitality industry. This is the first ergonomic standard in the nation written specifically to protect hotel housekeepers. In a [press release announcing the final standard](#), Cal/OSHA’s Chief Juliann Sum explained:

“Hotel housekeepers have higher rates of acute and cumulative injuries compared to workers in other industries, and data shows those injuries have steadily increased . . . This regulation requires employers to identify, evaluate and correct housekeeping-related hazards with the involvement of housekeepers and their union representative.”

The standard, applies to all lodging establishments that offer sleeping accommodations available to be rented by members of the public, from high-end hotels and resorts, to motels, inns and bed & breakfasts. The standard specifically excludes from this definition hospitals, nursing homes, residential communities, prisons, shelters, boarding schools and worker housing.



Covered establishments will be required, under the new standard, to develop, implement and maintain a written

Musculoskeletal Injury Prevention Program (“MIPP”) that is tailored to hazards associated with housekeeping. Employers have the option of including the MIPP with their preexisting Injury & Illness Prevention Program (“IIPP”) or to create a standalone program specifically for housekeeping MSD risks.

Regardless of its form, the MIPP must be available to covered employees on any shift. Notably, employees must also be able to access the MIPP electronically — a requirement that may pose a challenge to smaller establishments.

The required elements of a housekeeping MIPP will be familiar to any employer that has developed an IIPP, which should already include:

- worksite hazard evaluations;
- injury investigations;
- hazard abatement efforts;
- employee training; and
- recordkeeping.

Notably, covered employers must also complete an initial worksite assessment within three months of the effective date of the standard, which assessment is intended to identify and address a variety of potential ergonomic risk factors, ranging from unpredictable trauma occurrences such as slips, trips and falls, to more traditional repetitive stress MSD concerns such as regular and frequent reaching above shoulder height, lifting, bending, kneeling, squatting, pulling and/or pushing.

Perhaps most controversial about Cal/OSHA’s new Hotel Housekeeping Ergo rule, though, is the agency’s effort to wade into operational concerns by requiring employers to assess “excessive work rates” as well as “inadequate recovery time” between tasks.

Covered employers should act promptly so they are prepared once the standard goes into effect in July of this year. Lodging establishments that wait until the last minute will be feeling the heat as they attempt to develop the required program and conduct the initial worksite assessment within three months of the standard’s effective date.

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For more information about Cal/OSHA’s new Hotel Housekeeping Ergonomics Rule and other Cal/OSHA developments, join Conn Maciel Carey attorneys for a complimentary webinar on July 10, 2018 – [“New Cal/OSHA Issues California Employers Must Track.”](#)